IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2002 of 1983
AND
FIRST APPEAL NO 2003 of 1983
with
CIVIL APPLICATION No 6925 of 2002
in
FIRST APPEAL No 2002 of 1983
AND
CIVIL APPLICATION No 6924 of 2002
in
FIRST APPEAL No 2003 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G.S.R.T.C

Versus

RAMEJBAI PIROJKHAN SINDHI

Appearance:

1. First Appeal No. 2002 and 2003 of 1983

MR MD PANDYA for appellant in both the appeals

MR HARSHIT S TOLIA for Respondent No.1 in both the appeals

NOTICE SERVED for Respondent No. 2

2. Civil Application Nos. 6925 and 6924 of 2002

MR HARSHIT S TOLIA for applicants in both the applications

MR MD PANDYA for respondent in both the applications

CORAM : MR.JUSTICE KSHITIJ R.VYAS

and

MR.JUSTICE H.K.RATHOD

Date of decision: 29/10/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The Motor Accident Claims Tribunal (Main), Banaskantha, at Palanpur, by composite judgment and award dated 4th March 1983 passed in M.A.C.P. No. 142 of 1982 and M.A.C.P. No. 133 of 1982 awarded Rs.49,000/- with proportionate costs of the application and interest at the rate of 6% per annum from the date of application till realisation to Ramejbai, mother of the deceased Ajamkhan Pirojkhan and Rs.20,000/- with proportionate costs of the application and interest at the rate of 6% per annum from the date of application till realisation to Roshanbai, sister of deceased Ajamkihan Pirojkhan. The appellant Gujarat State Road Transport Corporation ('Corporation' for short) (original opponent No.2) and the driver of the ST bus (original opponent No.1) were directed to pay the said amount of compensation. The appellant Corporation has challenged the said judgment and award in these two appeals.

2. The facts stated in M.A.C.P. No.132 of 1983 are as under:

It is the case of the claimant Ramejbai that her son Ajamkhan had gone to Palanpur from Chitrasani on 21st April 1982 at about 4.30 p.m. and on the same day while he was returning towards ST stand and when he came near Bhavna Lodge, ST Bus No.GTE 5386 belonging to opponent No.2 driven by Opponent No.1, near the corner, even though there is a curve, was driving the bus in a rash and negligent manner and in excessive speed and he dashed the bus with Ajamkhan and the left hand side wheel of the said bus ran over said Ajamkhan and due to this, Ajamkhan was seriously injured and was removed to the Civil Hospital, at Palanpur, where he died. The deceased was the only son of the applicant. He was aged 30 years and his marriage ceremony was to be performed in the near future. As the husband of the applicant had died and the deceased was the only earning member in the family who was doing agricultural work. He was possessing 9 acres and 15 gunthas of land wherein there is a well and a

machine. He was earning Rs.25,000/- from the agricultural work. It is further the case that the deceased was also keeping buffaloes and was selling milk and therefrom, he was earning Rs.3,600/- per year. Besides that, he was dealing in giving and taking of land and cattle and therefrom, he was earning Rs.5,000/- per year. It is further case of the applicant that had the deceased not died, he would have lived upto 50 years more and calculating his income at Rs.33,600/- per year, the applicant has claimed Rs.6,00,000/- for the future economic loss, Rs.25,000/- on account of pain, shock and suffering and Rs.10,000/- for the expenses of obsequial ceremony after the death of the deceased. Thus, she is entitled to get the compensation of Rs.6,35,000/-, but she has restricted the claim to Rs.1,75,000/- which she has prayed to be awarded from the opponents with costs and future interest.

The opponents Nos.1 and 2 have filed their written statement at Exh.21 and 22 respectively and, inter alia, denied the averments made in the application. They denied the manner in which the accident had taken place. According to them, the bus had to take a turn at Bhavna Lodge and at that place, the bus was driven by opponent No.1 very slowly. According to them, at that time, he heard some noise of dash with the bus and therefore, he applied brakes and stopped the bus and on inquiry, he learnt about the accident. Therefore, it is submitted that the accident had not happened not due to the rash and negligent driving of the bus by opponent No.1, but it has happened due to the negligence of the deceased and the opponents are not liable. The opponents have also denied the quantum of the compensation claimed in the application.

3. The facts stated in M.A.C.P. No.133 of 1982 are as under:

It is the case of the applicant Roshanbai that deceased Ajamkhan was her elder brother and he died in the accident due to rash and negligent driving of opponent No.1. According to her, the deceased was holding agricultural land in the joint names of himself, the applicant herself and the mother of the deceased, admeasuring 9 acres and 15 gunthas wherein there is a well and a machine and the deceased was doing agricultural operation and out of the produce, the deceased was giving Rs.5,000/- to the applicant, after deducting all the expenses. The deceased was the applicant's younger brother and he was maintaining her in that way by giving share from the income. As her only

younger brother has died, the applicant has suffered a lot and she is deserted and experiences loneliness. According to her, she is entitled to get Rs.25,000/- as compensation towards the future economic loss; Rs.10,000/- for loss of affection and love and feelings of a younger brother and Rs.10,000/- for pain, shock and suffering. However, she has restricted the claim to Rs.25,000/- and has prayed that an award be passed against the opponents with costs and future interest.

In this claim petition also, both the opponents have filed their written statement at Exh.21 and 22 respectively and have denied the claim made in the application.

4. After appreciating the evidence on record, the Tribunal has held that the applicants have proved the death of the deceased was due to the rash and negligent driving of the ST bus No. GTE 5386 by opponent No.1, and has awarded compensation of Rs.49,000/- to the mother and Rs.20,000/- to the sister of the deceased by common judgment and award as mentioned earlier. Hence, these two appeals.

5. We have heard both these appeals together and are disposing of the same by this common judgment.

6. Learned Counsel Mr.Pandya appearing for the appellant has submitted while arguing the appeal against the mother of the deceased contending that the Tribunal has erred in deducting only 1/3rd of the amount of Rs.6,000/- (i.e. Rs.2,000/-) representing the yearly amount which the deceased would have spent on himself and has erred in holding that the net balance of the yearly monetary benefit loss comes to the tune of Rs.4,000/- per year. In the submission of learned Counsel, when there is a death of a young bachelor and the claim is made not by the wife and children but by the parents or sister or such other persons, the dependency amount worked out on normal basis would have to be sliced down by 2/3rd and the compensation to be awarded could not exceed more than 1/3rd of the amount assessed.

As far as the appeal against the claimant, i.e. sister of the deceased, learned Counsel Mr.Pandya appearing for the appellant has submitted that, admittedly, the claim is preferred by a married sister and therefore, she is not a dependent and therefore, the Tribunal could not have awarded any amount of compensation. On the other hand, learned Counsel Mr.Harshit Tolia appearing on behalf of the respondents

claimants while supporting the award passed by the Tribunal in toto, submitted that the Tribunal has not at all discussed the question regarding the future prospective loss of income of the deceased and has also not taken into consideration the income regarding selling of the milk and therefore, he requested this Court to enhance the claim of the claimants by exercising powers under Order 41 Rule 33 of the Code of Civil Procedure This is particularly in view of the fact that the claimants have neither preferred separate appeals nor filed cross objections.

7. We have gone through the evidence of Thakarsinh, Exh.25, eye witness of the incident; Ramejbai, mother of the deceased, Exh.27; Salimkhan, maternal uncle of the deceased, Exh.29; and Roshanbai, sister of the deceased, Exh.28. According to the evidence of Ramejbai, her deceased son was earning Rs.36,000/- per month out of the agricultural income and out of dairy income. According to her, the deceased was supervising the agricultural work, employing labourers. In her cross examination, she has admitted that her son has not kept any account regarding the agricultural income. Her son was cultivating the land after engaging labourers. Cattle were being looked after by the labourers. Ajamkhan was likely to get married in the future Vaishakh month. Her son was literate and has studied upto 7th standard. They had no Bank account and it was suggested to her that their agricultural income has not decreased and it was further suggested to her that her son was not earning Rs.36,000/- per year, but the said suggestions were denied by her. From the evidence of Ramejbai, it is clear that Ajamkhan was only looking after the agricultural farm and the fact of income of Rs.36,000/from the agricultural work as well as selling of the milk, the Tribunal has not accepted the same by observing that the said assertion is a myth. It is also observed by the Tribunal that had they obtained such an amount per year, then they would be keeping the Bank account or would be investing in some securities or would be keeping some accounts, out of which, it can be shown that the deceased had an income of Rs.36,000/- per year. The applicants could have produced the evidence regarding the market produce, but nothing has been produced on record. Therefore, the story that deceased Ajamkhan was earning Rs.36,000/- per year is a myth and cannot be accepted at its face value. At the most, Ajamkhan was a literate farmer and was looking after the work of farming, dairy conducted through labourers and his work was of a supervisory job and therefore, it would be just and proper to estimate his monthly income at Rs.500/- per

month. The said amount is multiplied by 12 and it would come to Rs.6,000/- per year, out of which, the deceased would have spent 1/3rd for himself leaving a net balance of Rs.4,000/-. The Tribunal has applied a multiplier of 16 considering the age of the deceased which was 30 years.

Roshanbai Exh.28, sister of the deceased, in her evidence has deposed that the deceased was cultivating the land and he used to give her Rs.5,000/- per year. In her cross examination, she has admitted that she has no documentary evidence to prove that her brother was giving her Rs.5,000/- per year. She did not know as to how much land she got in her share, out of their family property. From the evidence of Salimkhan, Exh.29, it is clear that the deceased used to raise wheat, raida, custard seeds and was getting Rs.10,000/- from dairy income. Even though she has stated that deceased spent Rs,20,000/- for performing the ritual ceremony of the father of the deceased and deceased has also arranged his sister's marriage and had to spend Rs.30,000/- and also purchased a house for her and had deposited Rs.30,000/- in the name of deceased with M/s.Dadabhai & Co., in the year 1980 and also further deposited Rs.32,000/- in the year 1981, nothing has been produced to support the said version except the bare say. Her evidence is highly exaggerated and is deposed just to support the claim, being a relative. The Tribunal, in our opinion, has rightly rejected the oral evidence of this witness on the income aspect of the deceased and has rightly assessed the income at Rs.500/- per month approximately as he was working as a supervisor over the agricultural farm and accordingly yearly income was estimated at Rs.6,000/-. Deducting 1/3rd out of that, i.e. Rs.2,000/-being the amount which the deceased must have spent on himself, the datum figure, according to the Tribunal would come to Rs.4,000/- per year. By applying multiplier of 16, the amount would come to Rs.64,000/-. Adding the amount of Rs.5,000/- on account of conventional damages and loss to the estate on account of expectation of life, according to the Tribunal, the total damages which is awardable to the applicants would be Rs.69,000/-.

8. Dealing with the submission of learned appearing for the appellant, namely, that the Tribunal has committed an error in deducting only 1/3rd of the calculated amount of Rs.6,000/- representing the yearly income which the deceased would have spent on himself, we find that there is substantial force in the submission of the learned Counsel. This Court in the case of Somabhai Vajabhai and anr. v. Babubhai Bhailalbhai and ors.

reported in 1982 (1) GLR 785 in an identical case, deducted 2/3rd amount which the deceased would have diverted for the maintenance of his own family, leaving 1/3rd for the maintenance of his parents. That was a case where the deceased died at the age of 20 years and was unmarried. Amongst the parents, the father was aged 45 years and the appellant's mother was aged about 40 years at the time of the accident. Out of the net amount of Rs.3,900/- available to the deceased, as assessed by the Court, it is observed by the Court that he would have been required to divert substantial amount in course of time for meeting the needs of his own family. It was observed that,

> "We say so because we are herein concerned with a person whose estimated bracket of income is not high. Having regard to the aforesaid circumstances, we are of the view that in the instant case, it would not be unreasonable to hold that out of the net amount of Rs.3900/-, two-thirds would have been diverted by the deceased for the maintenance of his own family and one-third for the maintenance of his parents. On that basis, the datum figure for computing the dependency benefit works out to Rs.1300/- per annum. Having regard to the young age of the deceased and the age of the parents and the fairly long period for which the parents could have looked forward to the deceased for pecuniary loss to the appellants works out to Rs.20,800/-, the multiplicand of 16 would appear to be just, reasonable and proper."

In the instant case also, the deceased died at the age of 30 years. At the time of death, he was a young bachelor leaving behind his mother and sister, and therefore, the dependency benefit lost would be to the tune of 2/3rd. Therefore, the compensation to be awarded, in our opinion, would not exceed more than 1/3rd of the amount assessed. Actually, in our opinion, even though after placing reliance on the decision of Somabhai's case (supra), the Tribunal erroneously deducted 1/3rd of the amount assessed. Thus, estimating the income of the deceased at Rs.500/- per month, i.e. Rs.6,000/- per year, deducting 2/3rd, i.e. Rs.4,000/- of the estimated income, it would come to Rs.2,000/- per year being the dependency loss. By applying multiplier of 16, the amount would come to Rs.32,000/- and adding Rs.5,000/- being conventional amount as awarded by the Tribunal, it would come to Rs.37,000/- being the total amount of compensation. We are, therefore, of the opinion that the

claimant Ramejbai is entitled to Rs.37,000/- by way of compensation and not Rs.69,000/- as found awardable by compensation and not Rs.49,000/- as found awardable by the Tribunal.

9. As far as the claim petition filed by Roshanbai, sister of the deceased, is concerned, on going through the evidence, it is clear that she has not claimed the amount from the estate of the deceased and she is also not a dependent of the deceased. On the contrary, the evidence of Ramejbai goes to show that at the time of the application, she was already married and in that view of the matter, she being not the dependent of the deceased, her claim application before the Tribunal was, on the face of it, not tenable. In any case, she is not entitled to claim any amount by way of compensation.

We are, therefore, of the opinion that claimant Ramejbai is entitled to Rs.37,000/- by way of compensation and not Rs.49,000/- as held by the Tribunal to be awardable to her.

In view of the above discussion, we are clearly of the opinion that claimant Ramejbai, mother of the deceased is entitled to get compensation of Rs.37,000/- with 6% interest with proportionate cost from the date of the application till realisation.

Accordingly, we partly allow First Appeal No.2002 of 1983 by modifying the award passed by the Motor Accident Claims Tribunal (Main), Banaskantha at Palanpur, in M.A.C.P. No. 132 of 1982 by reducing the amount of compensation from Rs.69,000/- to Rs.37,000/- (Rupees Thirty-seven thousand only) with interest at the rate of 6% per annum with proportionate costs from the date of the application till realisation.

We also allow the First appeal No.2003 of 1983 preferred against respondent Roshanbai by setting aside the award of the Motor Accident Claims Tribunal (Main), Banaskantha, at Palanpur, in M.A.C.P. No. 133 of 1982 awarding compensation of Rs.20,000/- to the claimant, by rejecting the said claim petition.

We direct the Dena Bank, Palanpur Branch, Palanpur, to deposit the overdue amount of interest on the amount lying with the Bank from 21st August 1989 for the period till date as if the Fixed Deposit Receipts in question are renewed from 21st August 1989 for the period till date.

The Motor Accident Claims Tribunal (Main), Banaskantha at Palanpur is directed to disburse the amount of the said Fixed Deposit Receipts after working out the amount which is due and payable to the concerned parties, if any, in pursuance of this judgment and the rest of the amount to be refunded to the appellant Corporation, if any.

10. In view of the order passed in the First Appeals, the Civil Applications do not survive and the same are disposed of accordingly.

(Kshitij R. Vyas, J.)

(H.K. Rathod, J.)

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